

REMARKS

Claims 16-24 and 41-51 are currently pending in the application. By this response, no claims are amended, added, or canceled. Reconsideration of the rejected claims in view of the following remarks is respectfully requested.

Completion of Record

In the previous Office Action dated February 12, 2008, the Examiner refused to consider two documents (i.e., DE 19514574 and DE 3528604) submitted in the IDS filed on June 12, 2007. These documents were discussed in the personal interview between the Examiner and Applicants' representative on May 8, 2008. Applicants note that the Examiner has cited DE 19514574 in the PTO-892 accompanying the outstanding Office Action dated July 31, 2008.

However, the Examiner has failed to indicate consideration of DE 3528604. Yet, the Examiner relies upon DE 3528604 in rejecting claims 46-48 in the outstanding Office Action. As the document DE 3528604 is used to reject the claims, it has clearly been considered by the Examiner, and Applicants request that the Examiner formally indicate consideration of this document by citing it in a new PTO-892 or by returning a signed and initialed copy of the PTO-1449 form from the IDS dated June 12, 2008.

Moreover, in the outstanding Office Action, the Examiner uses document U.S. Pat. No. 1,177,695 to reject claims 42 and 43. However, this document is not cited by the Examiner. Nor has this document been submitted in an IDS. Accordingly, Applicants request that the Examiner make this document part of the record by citing it in a new PTO-892 in the next Official communication.

35 U.S.C. §112, first paragraph, Rejection

Claims 49-51 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. More specifically, the Examiner asserts that cleaning happening during a first or second interval is not disclosed, and that the roller being specifically the first or second return roller is not disclosed. This rejection is respectfully traversed.

Applicants respectfully disagree with the Examiner's assertions, and note MPEP §§2163 *et seq.* provides the following guidance regarding the written description requirement of 35 U.S.C. §112, first paragraph:

To satisfy the written description requirement, a patent specification must describe the claimed invention in sufficient detail that one skilled in the art can reasonably conclude that the inventor had possession of the claimed invention. See, e.g., *Moba, B.V. v. Diamond Automation, Inc.*, 325 F.3d 1306, 1319, 66 USPQ2d 1429, 1438 (Fed. Cir. 2003); *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d at 1563, 19 USPQ2d at 1116.

...

The fundamental factual inquiry is whether the specification conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, applicant was in possession of the invention as now claimed. See, e.g., *Vas-Cath, Inc.*, 935 F.2d at 1563-64, 19 USPQ2d at 1117.

...

If a skilled artisan would have understood the inventor to be in possession of the claimed invention at the time of filing, even if every nuance of the claims is not explicitly described in the specification, then the adequate description requirement is met. See, e.g., *Vas-Cath*, 935 F.2d at 1563, 19 USPQ2d at 1116; *Martin v. Johnson*, 454 F.2d 746, 751, 172 USPQ 391, 395 (CCPA 1972) (stating "the description need not be in *ipsis verbis* [i.e., "in the same words"] to be sufficient").

...

The subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*) in order for the disclosure to satisfy the description requirement.

Applicants respectfully submit that claims 49-51 have adequate written description because the specification conveys with reasonable clarity to those skilled in the art that, as of the

filing date sought, Applicants were in possession of the inventions recited in these claims.

Particularly, paragraphs 0012 through 0014 of the clean version of the substitute specification dated June 12, 2007 describe how the rollers are driven intermittently but at different speeds, and how friction between the faster of the two rollers and the belt results in cleaning. More specifically, these paragraphs state:

[0012] The invention is related to a method for operating a manure transport device for livestock breeding operations with a manure conveyor belt driven in a circulating manner, arranged underneath a manure-permeable stall floor, with two driven return rollers about which the belt circulates. Both driven return rollers are driven intermittently in the same direction at a different rotational speed and each return roller is driven more quickly or more slowly at intervals.

[0013] In embodiments, a method for a manure conveyor belt is proposed which is guided around two drive rollers – the front and the rear drive roller. Both drive rollers are driven intermittently, but run at different speeds. Thus, for example, the front drive roller is driven temporarily for a period of a few minutes rotating more quickly than the rear drive roller. After a certain rest period, i.e., stoppage of the belt, the rear return roller is driven more quickly than the front one. This switching can be accomplished most simply by a frequency controller, but can also be controlled by other electronic or electric devices.

[0014] The roller respectively driven more quickly in a circulating manner runs more quickly than the manure conveyor belt. As such, through the friction occurring between the roller and the underside of the belt, a cleaning of the belt and a cleaning of the roller takes place. At the same time the belt has the possibility of returning again to a straight course if it has drifted out of the straight course.

[emphasis added].

As is clear from the above-noted passages, in embodiments of the invention, the front roller is driven more quickly than the rear roller for a period of a few minutes (i.e., during a “first interval”). Then after a rest period, the rear roller is driven more quickly than the front roller (i.e., during a “second interval”). Whichever roller is being driven more quickly creates a friction between that roller and the belt, which results in the cleaning effect. As such, the cleaning

happens during both intervals, i.e., during the first interval the cleaning occurs for the front roller, and during the second interval the cleaning occurs for the rear roller.

Thus, although the specification does not use the exact phrases “first return roller,” “second return roller,” “first interval,” and “second interval,” Applicants submit that, when taken as a whole, the original disclosure conveys with reasonable clarity to those skilled in the art that, as of the filing date sought, Applicants were in possession of the inventions as now recited in claims 49-51.

Accordingly, Applicants respectfully request that the §112, first paragraph, rejection of claims 49-51 be withdrawn.

35 U.S.C. §103 Rejection

Claims 16-19, 21, 22, and 49-51 are rejected under 35 U.S.C. §103(a) for being unpatentable over DE 19414574. Applicants note that DE 19414574 is not of record in this application. Instead, it appears that the Examiner is referring to DE 19514574, which is cited in the PTO-892 Form that accompanies the Office Action dated July 31, 2008. Applicants assume for the purposes of this response that the Examiner is basing the rejection on DE 19514574 (“Kühlmann”). Applicants respectfully request clarification of this matter in the next Office communication.

Additionally, claim 20 is rejected under 35 U.S.C. §103(a) for being unpatentable over Kühlmann in view of U.S. Pub. No. 2006/0260911 (“Eckert”). Claims 23, 24, and 41 are rejected under 35 U.S.C. §103(a) for being unpatentable over Kühlmann in view of U.S. Pat. No. 3,982,499 (“Frankl”) and U.S. Pat. No. 4,111,412 (“Cathers”). Claims 42 and 43 are rejected under 35 U.S.C. §103(a) for being unpatentable over Kühlmann in view of Frankl and Cathers,

and further in view of U.S. Pat. No. 1,177,695 ("Gable"). Claims 44 and 45 are rejected under 35 U.S.C. §103(a) for being unpatentable over Kühlmann in view of U.S. Pat. No. 3,119,374 ("Ladner"). Claims 46-48 are rejected under 35 U.S.C. §103(a) for being unpatentable over Kühlmann in view of DE 3528604 ("Custers"). These rejections are respectfully traversed.

To establish a *prima face* case of obviousness, all claim limitations must be taught or suggested by the prior art. *See, In re Royka*, 490 F.2d 981, 985, 180 USPQ 580, 583 (CCPA 1974); *see also, In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). If the prior art reference(s) do not teach or suggest all of the claim limitations, Office personnel must explain why the differences between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art (MPEP 2141). Applicants submit that no proper combination of the applied art discloses or suggests each and every feature of the claimed invention.

Claims 16-19, 21, 22, and 49-51 in view of Kühlmann

The invention relates to a method for operating a manure transport device for livestock breeding operations. More specifically, independent claim 16 recites, *inter alia*:

- driving a first return roller, about which a manure conveyor belt circulates, at a first rotational speed;
- driving a second return roller, about which the manure conveyor belt circulates, at a second rotational speed;
- wherein during a first interval the first rotational speed exceeds the second rotational speed, and during a second interval the second rotational speed exceeds the first rotational speed.

The Examiner asserts that Kühlmann discloses operating a manure conveyor belt around first and second rollers, including driving the first roller at a rotational speed faster than the second roller. The Examiner acknowledges that Kühlmann does not disclose a second interval or driving the second roller faster than the first roller during the second interval. However, the Examiner asserts that it would have been obvious to modify the method of Kühlmann to include

a second interval and driving the second roller faster than the first roller during the second interval. Applicants respectfully disagree.

Kühlmann discloses driving a manure conveyor belt around two rollers, where both rollers are driven in the same direction and at different rotational speeds. Therefore, Kühlmann discloses driving a first roller faster than a second roller. However, Kühlmann makes no mention whatsoever of first and second intervals, and does not even remotely suggest that *during a first interval the first rotational speed exceeds the second rotational speed, and during a second interval the second rotational speed exceeds the first rotational speed*, as recited in claim 16. Instead, in Kühlmann, the return roller is always driven faster than the other roller. This is described at paragraph [0004] of Applicants' substitute specification, which states:

[0004] However, with the device according to DE 195 14 574 C1, the problem arises that it is difficult to guide planar textile structures as conveyor belts because they always have the tendency to slip from the drive and return rollers due to the fact that the textile structure does not allow a trouble-free guiding of the belt. Accordingly, with this known device, the straight course of the belt has been ensured by driving the return roller always at a higher rotational speed than the drive roller. Experiments have shown that this arrangement makes a trouble-free guiding of the manure conveyor belt possible.

[emphasis added].

Thus, in Kühlmann the return roller is always driven faster than the drive roller for the purpose of keeping the belt properly guided on the rollers. There is no mention of ever driving the rollers at different speeds during first and second intervals. And there is certainly no mention of driving the return roller faster during a first interval, and driving the drive roller faster during a second interval. Therefore, Kühlmann does not disclose or suggest *during a first interval the first rotational speed exceeds the second rotational speed, and during a second interval the second rotational speed exceeds the first rotational speed*, as recited in claim 16.

Notwithstanding, the Examiner asserts, *without any factual support whatsoever*, that it would have been obvious to modify Kühlmann to have first and second intervals, and to drive the drive roller faster than the return roller during the second interval “so that excrement that was not removed on the first rotation of the conveyor was immediately deflected by second return roller on a subsequent rotation.” Thus, without any factual basis or documentary evidence, the Examiner simply concludes that it would have been obvious to add the features of claim 16 to Kühlmann.

Rejections based on §103 must rest on a factual basis with these facts being interpreted without hindsight reconstruction of the invention from the prior art. The Office may not, because of doubt that the invention is patentable, resort to speculation, unfounded assumption or hindsight reconstruction to supply deficiencies in the factual basis for the rejection. *See, In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). In this case, the Examiner has failed to factually support the conclusion of obviousness, and instead relies on speculation and unfounded assumption in asserting what would have been obvious to one of ordinary skill in the art at the time the invention was made.

More specifically, there is no evidence of record, other than Applicants’ own disclosure, that describes driving two rollers at different speeds during two different intervals. Moreover, as Kühlmann discloses driving the rollers at different speeds to prevent slipping to ensure a straight course, there is no evidence of record, other than Applicants’ own disclosure, that describes driving one roller faster than the other to create a friction that cleans the belt and roller.

Accordingly, substantially the entire basis of the Examiner’s rejection is found only in Applicants’ own disclosure. Put another way, in the Examiner’s proposed modification, the feature that is added to Kühlmann and the reason for doing so are taken directly from Applicant’s

own disclosure, and from nowhere else. Thus, the Examiner is clearly using information that was gleaned only from Applicants' disclosure in formulating the rejection, which amounts to impermissible hindsight reconstruction.

Claims 17-19, 21, 22, and 49-51 depend from independent claim 16, and are distinguishable from the applied art at least for the reasons discussed above with respect to the independent claim. Moreover, the applied fails to disclose or suggest many of the additional features recited in these dependent claims.

For example, Kühlmann does not disclose or suggest the features recited in claims 49-51. Contrary to the Examiner's assertion, Kühlmann makes no mention whatsoever of friction between the rollers and the belt, much less that friction between a roller and belt results in a cleaning of the roller and the belt. Friction and cleaning are simply not mentioned by Kühlmann, and it unclear how the Examiner is interpreting Kühlmann to disclose such features.

For all of the above-noted reasons, Applicants submit that the claimed invention is allowable over the applied art, and respectfully request that the §103 rejection of claims 16-19, 21, 22, and 49-51 be withdrawn.

Claim 20 in view of Kühlmann and Eckert

Claim 20 depends from allowable independent claim 16, and is allowable based on the allowability of claim 16. As discussed above, Kühlmann does not disclose or suggest all of the features of claim 16. Eckert does not compensate for the deficiencies of Kühlmann with respect to claim 16. Accordingly, Applicants respectfully request that the §103 rejection of claim 20 be withdrawn.

Claims 23, 24, and 41 in view of Kühlmann, Frankl and Cathers

Claims 23, 24, and 41 depend from allowable independent claim 16, and are allowable based on the allowability of claim 16. As discussed above, Kühlmann does not disclose or suggest all of the features of claim 16. Frankl and Cathers do not compensate for the deficiencies of Kühlmann with respect to claim 16. Accordingly, Applicants respectfully request that the §103 rejection of claims 23, 24, and 41 be withdrawn.

Claims 42 and 43 in view of Kühlmann, Frankl, Cathers, and Gable

Claims 42 and 43 depend from allowable independent claim 16, and are allowable based on the allowability of claim 16. As discussed above, Kühlmann does not disclose or suggest all of the features of claim 16. Frankl, Cathers and Gable do not compensate for the deficiencies of Kühlmann with respect to claim 16. Accordingly, Applicants respectfully request that the §103 rejection of claim 42 and 43 be withdrawn.

Claims 44 and 45 in view of Kühlmann and Ladner

Claims 44 and 45 depend from allowable independent claim 16, and are allowable based on the allowability of claim 16. As discussed above, Kühlmann does not disclose or suggest all of the features of claim 16. Ladner does not compensate for the deficiencies of Kühlmann with respect to claim 16.

Moreover, Applicants submit that Ladner does not disclose or suggest the features recited in claim 45. More specifically, Ladner does not disclose *the trough runs between a manure collection channel and a urine collection channel*, as recited in claim 45. Contrary to the

Examiner's assertion, article 78 in Ladner is not a manure collection channel. Instead, article 78 is a scraper. More specifically, Ladner discloses:

any manure which has been retained on the lower run 68 of the belt 24 will be prevented from returning with the upper run of the belt by means of the scraper 78 which will dislocate any retained manure from the lower run 68 of the belt causing it to drop into the pit 20.

(col. 2, lines 68-73).

Thus, the belt 24 rotates in a counter-clockwise manner as viewed in FIG. 2, and the scraper 78 prevents anything on the bottom run from making its way to the top run. Therefore, the scraper 78 cannot act as a manure collection channel.

Accordingly, Applicants respectfully request that the §103 rejection of claim 44 and 45 be withdrawn.

Claims 46-48 in view of Kühlmann and Custers

Claim 46-48 depends from allowable independent claim 16, and are allowable based on the allowability of claim 16. As discussed above, Kühlmann does not disclose or suggest all of the features of claim 16. Custers does not compensate for the deficiencies of Kühlmann with respect to claim 16.

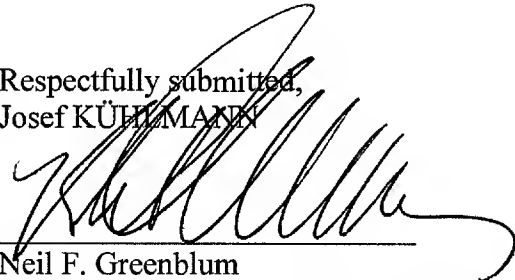
Furthermore, Applicants submit that Custers does not disclose or suggest the features recited in claim 46 because Custers does not disclose *the driving the first return roller and the driving the second return roller cause a bottom half of the manure conveyor belt to slide on a plastic sheet*. More specifically, Custers' conveyor 7 does not slide on a plastic sheet. Instead, the conveyor 7 travels across support rails 6, which do not constitute a plastic sheet. Therefore, the applied art fails to disclose the combination of features recited in claim 46.

Accordingly, Applicants respectfully request that the §103 rejection of claim 46-48 be withdrawn.

CONCLUSION

In view of the foregoing remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Applicants hereby make a written conditional petition for extension of time, if required. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 19-0089.

Respectfully submitted,
Josef KÜHN-MAXEN


Neil F. Greenblum
Reg. No. 28,394

Robert W. Mueller
Reg. No. 35,043

December 1, 2008
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191